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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

NO. 337

ALEX K. EASTON, d/b/a
GEORGE EASTON FURNITURE CO.,

Petitioner

v.

EDWARD EARL WEIR, II, a minor
and MURIEL A. WEIR as guardian of
the property of EDWARD EARL WEIR, II,
a minor,

Respondent

PETITIONER'S REPLY BRIEF

ALEX K. EASTON

P. O. Box 3591
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Petitioner

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PETITIONER'S REPLY BRIEF

ARGUMENT

DOES THE SUPREME COURT HAVE JURISDICTION SUFFICIENT TO GRANT PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

The respondent argues that the Court was not given a concise picture of the denial of Constitutional rights. Yet in the case of Durley v. Mayo (Fla. 1956) 76 S.Ct. 806, 351 U.S. 277, 100 L.Ed. 1178 § 111, I read:

> 5. Even though the federal questions raised in a petition for habeas corpus are not set forth as clearly as they might be, the Supreme Court of the United States will not rely upon that inadequacy, where the petition was drafted by a layman acting for himself, and the substance of the claim is clear; the Supreme Court will not insist

upon more refined allegations than such a person could be expected to supply.

The respondent argues that the appeal to the District Court of Appeal of Florida, Second District, which we seek to have reviewed here (after having been denied certiorari in the Supreme Court of Florida) was to review a finding of fact by a trial judge; Petitioner contends it was not to review a finding of fact, but to review a mistake of law.

In his assignments of error to the District Court of Appeal of Florida, my attorney specified that the trial court had erroneously cast the burden of proof of mitigation of damages on me (petitioner) and that this had resulted in an inadequate judgment which did not make me whole. In other words, my attorney charged the trial court with applying the wrong rule of law by casting the burden of proof on the wrong party.

It is the law of Florida that the application of the wrong rule of law is a denial of due process. Matthews v. Metropolitan Life Ins. Co. (Fla., 1956), 89 So.2d 641-643 (quoted on page 17 of my petition for certiorari). This use of the wrong rule is a legal result which flows from such an error. Therefore, when I alleged the error, I alleged the legal result which attended it. In failing to correct the error, the District Court of Appeal of Florida perpetuated the denial of due process of law which attended it. Since the use of the wrong rule of law is a result of the primary error, this could not be assigned as error per se, however, because it is a consequence of the primary error. It could only be perpetuated by perpetuating the primary error. This due process implication of the primary error, however, embodies the Constitutional issue on which my petition here is grounded.

In Herndon v. State of Georgia (Ga., 1935) 55 S.Ct. 794, 295 U.S. 441, 79 L.Ed. 1530), this Court, speaking through Mr. Justice Sutherland, stated in Part:

". . . the adverse action of the trial court was not preserved by pendente lite or assigned as error in due time in the bill of exceptions, as the settled rules of the state practice require."

The petitioner contends that he did preserve the adverse action of the trial court by assignments of error in due time (exceptions are not required by the State of Florida); that he has preserved the Federal question and it may be reviewed here.

When the District Court of Appeal rendered its per curiam opinion on June 10, 1966, I (the petitioner) released my attorney, due to financial stress, and with absolutely no knowledge of law, my wife and I prepared the petition for rehearing and have since that time been our own counsel. I cried to the Court to look at the record, which showed that the defendants produced no evidence that I had failed to mitigate damages, although it was they who had raised this affirmative defense. Instead, the defense had used information given by me in confidence to help and protect the defendant landlord from her negligent contractor; they had banded together with the insurance and the independent contractor and painted a shame-shame picture to the judge. The insurance adjuster lied under oath, saying that he did not tell my employees and myself not to move the merchandise. This gave rise to the defense repeating and repeating, "Did you move it?" "Did you move it?" (referring to the water-soaked furniture) and tainted the case, when the truth of the matter was that the defendants never produced evidence that there was another place it could have been moved from the defendants' warehouse where it was damaged. On the other hand, I testified without contradiction that I had made a survey of the area and found no warehouse large enough to which the damaged and wet furniture could be moved, uncrated, dried out and repaired. Therefore, when the Florida courts drastically reduced the amount of damages to a lesser amount than my demonstrated losses, proved by the records of my business, they wrongfully

penalized me, the petitioner, for failing to disprove an affirmative defense, upon which the defendants had the burden of proof.

The Florida Supreme Court requires that the district court's opinion appealed from be in conflict with the decision of the Supreme Court, or another district court. Our certiorari was insufficient and dismissed--but in it, we again argued that the burden of proof had been improperly placed on us concerning the mitigation of damages, which is an affirmative defense. At this court, again we argued that the $16,000.00 awarded would not make us whole. The Court said in Fisher v. City of Miami:

> "In proceeding to a judgment here we should recall that the primary basis for an award of damages is compensation. That is, the objective is to make the injured party whole to the extent that it is possible to measure his injury in terms of money. Compensatory damages are recoverable as a matter of right."
>
> Fisher v. City of Miami, Fla., 172 So.2d 455

Even in my ignorance of law, the question was still presented, though not in specific words (San Jose' Land and W. Co. v. San Jose' Ranch Co., 23 S.Ct. 487, 189 U.S. 177, 47 L.Ed. 765 (1903), etc., refer to page 17a in my certiorari to this Court), that the burden of proving mitigation of damages had been misplaced; therefore, the Court would have, in their understanding of law, fully considered the question when they denied certiorari and ruled against me.

In my petition for rehearing to the Florida Supreme Court, I again cried, "Look at the record; there is no evidence presented by the defense that there was a place to move the wet furniture; there is no evidence presented by the defense to show that he sustained his affirmative defense of mitigation."

I have filed with your Court the entire record of testimony, along with exhibits and the financial statements of my furniture business, which were presented at the time of trial, so that you may examine the record.

I, petitioner, was not required by the rules of this

Court to furnish the respondent this record, as he intimated, but I have served him with an itemized list of the record I have filed.

Using the sample case furnished me by this Court as a guide for preparing my writ of certiorari, in the Statement of the Case, with the help of the Lord I have selected quotes from the testimony to form the picture, knowing in this Court's wisdom they will recognize the injustices. The very nature of this case is such that each time I argued that the burden had been misplaced, I said the wrong rule of law has been applied. Florida Supreme Court holds that this is a denial of due process. Matthews v. Metropolitan Life Ins. Co., supra. Since I have been denied due process in the State of Florida, it follows that I have been denied the security provided by our Constitution in the Fourteenth Amendment. The application of the wrong rule of law resulted in the grossly inadequate judgment of $16,000.00, when my proven losses were in excess of $227,000.00. This will not make me whole and the provisions of the Fourteenth and Fifth Amendments have been denied me.

CONCLUSION

For the reasons given, I contend that the Federal questions were timely raised and certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Petitioner's Reply Brief has been furnished the law firm of Harrison, Greene, Mann, Davenport, Rowe & Stanton, Tenth Floor, First Federal Building, St. Petersburg, Florida,

by mail, this 28th day of September, 1967.

Alex K. Easton

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